

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation and  
Petition to Revoke Probation Against:** )  
)  
)  
)

**FA'AFUINA SALAPIU AFATO, M.D.** )

**Case No. 800-2015-017406**

**Physician's and Surgeon's  
Certificate No. G 76223** )  
)  
)

**Respondent** )  
)

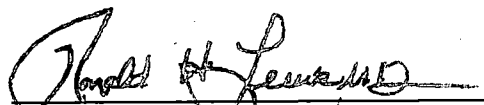
**DECISION AND ORDER**

**The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the  
Decision and Order of the Medical Board of California, Department of Consumer Affairs,  
State of California.**

**This Decision shall become effective at 5:00 p.m. on February 1, 2018.**

**IT IS SO ORDERED: January 2, 2018.**

**MEDICAL BOARD OF CALIFORNIA**

  
\_\_\_\_\_  
**Ronald H. Lewis, M.D., Chair  
Panel A**

1 XAVIER BECERRA  
Attorney General of California  
2 ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General  
3 MARA FAUST  
Deputy Attorney General  
4 State Bar No. 111729  
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10 **BEFORE THE**  
11 **MEDICAL BOARD OF CALIFORNIA**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation and Petition to  
15 Revoke Probation Against:

16 **FA'AFUINA SALAPIU AFATO, M.D.**  
1429 Colusa Ave., Suite B  
Yuba City, CA 95993

17 Physician's and Surgeon's Certificate No. G 76223

18 Respondent.

Case No. 800-2015-017406

OAH No. 2017050109

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
23 of California (Board). She brought this action solely in her official capacity and is represented in  
24 this matter by Xavier Becerra, Attorney General of the State of California, by Mara Faust, Deputy  
25 Attorney General.

26 2. Respondent Fa'afouina Salapiu Afato, M.D. (Respondent) is represented in this  
27 proceeding by attorney Dominique A. Pollara, Esq., whose address is: 3600 American River  
28 Drive, Suite 160, Sacramento, CA 95864.

1           3.     On or about April 5, 1993, the Board issued Physician's and Surgeon's Certificate  
2     No. G 76223 to Fa'afouina Salapiu Afato, M.D. (Respondent). The Physician's and Surgeon's  
3     Certificate was in full force and effect at all times relevant to the charges brought in the  
4     Accusation and Petition to Revoke Probation No. 800-2015-017406, and will expire on April 30,  
5     2019, unless renewed.

6                                   JURISDICTION

7           4.     Accusation and Petition to Revoke Probation No. 800-2015-017406 was filed before  
8     the Board, and is currently pending against Respondent. The Accusation and Petition to Revoke  
9     Probation and all other statutorily required documents were properly served on Respondent on  
10    March 9, 2017. Respondent timely filed his Notice of Defense contesting the Accusation and  
11    Petition to Revoke Probation.

12          5.     A copy of Accusation and Petition to Revoke Probation No. 800-2015-017406 is  
13    attached as Exhibit A and incorporated herein by reference.

14                                   ADVISEMENT AND WAIVERS

15          6.     Respondent has carefully read, fully discussed with counsel, and understands the  
16    charges and allegations in the Accusation and Petition to Revoke Probation No. 800-2015-  
17    017406. Respondent has also carefully read, fully discussed with counsel, and understands the  
18    effects of this Stipulated Settlement and Disciplinary Order.

19          7.     Respondent is fully aware of his legal rights in this matter, including the right to a  
20    hearing on the charges and allegations in the Accusation and Petition to Revoke Probation; the  
21    right to confront and cross-examine the witnesses against him; the right to present evidence and to  
22    testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of  
23    witnesses and the production of documents; the right to reconsideration and court review of an  
24    adverse decision; and all other rights accorded by the California Administrative Procedure Act  
25    and other applicable laws.

26          8.     Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
27    every right set forth above.

28    ///

1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Accusation  
3 and Petition to Revoke Probation No. 800-2015-017406, if proven at a hearing, constitute cause  
4 for imposing discipline upon his Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the Accusation and Petition to Revoke Probation without  
6 the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing,  
7 Complainant could establish a factual basis for the charges in Accusation the Petition to Revoke  
8 Probation, and that Respondent hereby gives up his right to contest those charges.

9 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to  
10 discipline and he agrees to be bound by the Board's probationary terms as set forth in the  
11 Disciplinary Order below.

12 12. Respondent further agrees that if he ever petitions for early termination or  
13 modification of probation, or if an accusation and/or petition for revocation of probation is filed  
14 against him before the Medical Board of California, all of the charges and allegations contained  
15 in the Accusation and Petition to Revoke Probation No. 800-2015-017406, shall be deemed true,  
16 correct and fully admitted by Respondent for purposes of any such proceeding, or other licensing  
17 proceeding involving Respondent in the State of California.

18 CIRCUMSTANCES IN MITIGATION

19 13. Respondent Fa'afouina Salapiu Afato, M.D. is admitting responsibility at an early  
20 stage in the proceedings. Nearly all of the charged conduct in this Accusation and Petition to  
21 Revoke Probation pre-date respondent's attendance at the PACE program and his follow-up  
22 participation in PEP Program as part of his last probationary order in case No. 02-2011-214348.

23 CONTINGENCY

24 14. This stipulation shall be subject to approval by the Medical Board of California.  
25 Respondent understands and agrees that counsel for Complainant and the staff of the Medical  
26 Board of California may communicate directly with the Board regarding this stipulation and  
27 settlement, without notice to or participation by Respondent or his counsel. By signing the  
28 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek

1 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails  
2 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary  
3 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal  
4 action between the parties, and the Board shall not be disqualified from further action by having  
5 considered this matter.

6 15. The parties understand and agree that Portable Document Format (PDF) and facsimile  
7 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile  
8 signatures thereto, shall have the same force and effect as the originals.

9 16. In consideration of the foregoing admissions and stipulations, the parties agree that  
10 the Board may, without further notice or formal proceeding, issue and enter the following  
11 Disciplinary Order:

12 **DISCIPLINARY ORDER**

13 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 76223 issued  
14 to Respondent Fa'afouina Salapiu Afato, M.D., is revoked. However, the revocation is stayed  
15 and Respondent is placed on probation for the remaining period of probation in case No. 02-  
16 2011-214348, which was a five-year probation commencing on November 26, 2014. Respondent  
17 cannot petition for early termination of probation for in this case and 02-2011-214348 for a full  
18 year from the effective date of the decision.

19 1. **CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO**  
20 **RECORDS AND INVENTORIES.** Respondent shall maintain a record of all controlled  
21 substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any  
22 recommendation or approval which enables a patient or patient's primary caregiver to possess or  
23 cultivate marijuana for the personal medical purposes of the patient within the meaning of Health  
24 and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and  
25 address of the patient; 2) the date; 3) the character and quantity of controlled substances involved;  
26 and 4) the indications and diagnosis for which the controlled substances were furnished.

27 Respondent shall keep these records in a separate file or ledger, in chronological order. All  
28 records and any inventories of controlled substances shall be available for immediate inspection

1 and copying on the premises by the Board or its designee at all times during business hours and  
2 shall be retained for the entire term of probation.

3 2. PREScribing PRACTICES COURSE. Within 60 calendar days of the effective  
4 date of this Decision, Respondent shall enroll in a course in prescribing practices approved in  
5 advance by the Board or its designee. Respondent shall provide the approved course provider  
6 with any information and documents that the approved course provider may deem pertinent.  
7 Respondent shall participate in and successfully complete the classroom component of the course  
8 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully  
9 complete any other component of the course within one (1) year of enrollment. The prescribing  
10 practices course shall be at Respondent's expense and shall be in addition to the Continuing  
11 Medical Education (CME) requirements for renewal of licensure.

12 A prescribing practices course taken after the acts that gave rise to the charges in the  
13 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
14 or its designee, be accepted towards the fulfillment of this condition if the course would have  
15 been approved by the Board or its designee had the course been taken after the effective date of  
16 this Decision.

17 Respondent shall submit a certification of successful completion to the Board or its  
18 designee not later than 15 calendar days after successfully completing the course, or not later than  
19 15 calendar days after the effective date of the Decision, whichever is later.

20 3. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective  
21 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in  
22 advance by the Board or its designee. Respondent shall provide the approved course provider  
23 with any information and documents that the approved course provider may deem pertinent.  
24 Respondent shall participate in and successfully complete the classroom component of the course  
25 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully  
26 complete any other component of the course within one (1) year of enrollment. The medical  
27 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing  
28 Medical Education (CME) requirements for renewal of licensure.

1 A medical record keeping course taken after the acts that gave rise to the charges in the  
2 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
3 or its designee, be accepted towards the fulfillment of this condition if the course would have  
4 been approved by the Board or its designee had the course been taken after the effective date of  
5 this Decision.

6 Respondent shall submit a certification of successful completion to the Board or its  
7 designee not later than 15 calendar days after successfully completing the course, or not later than  
8 15 calendar days after the effective date of the Decision, whichever is later.

9 4. MONITORING – PRACTICE. The following probationary condition is incorporated  
10 from the conditions already set out in the five-year probationary order in Case No. 02-2011-  
11 214348 as follows: Respondent shall remain enrolled in the Physician Enhancement Program  
12 pursuant to the order in case number 02-2011-214348.

13 5. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the  
14 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice  
15 where: 1) Respondent merely shares office space with another physician but is not affiliated for  
16 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that  
17 location.

18 If Respondent fails to establish a practice with another physician or secure employment in  
19 an appropriate practice setting within 60 calendar days of the effective date of this Decision,  
20 Respondent shall receive a notification from the Board or its designee to cease the practice of  
21 medicine within three (3) calendar days after being so notified. The Respondent shall not resume  
22 practice until an appropriate practice setting is established.

23 If, during the course of the probation, the Respondent's practice setting changes and the  
24 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent  
25 shall notify the Board or its designee within 5 calendar days of the practice setting change. If  
26 Respondent fails to establish a practice with another physician or secure employment in an  
27 appropriate practice setting within 60 calendar days of the practice setting change, Respondent  
28 shall receive a notification from the Board or its designee to cease the practice of medicine within

three (3) calendar days after being so notified. The Respondent shall not resume practice until an appropriate practice setting is established.

6. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

7. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is prohibited from supervising physician assistants.

8. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

9. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

10. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no



1 circumstances shall a post office box serve as an address of record, except as allowed by Business  
2 and Professions Code section 2021(b).

3 Place of Practice

4 Respondent shall not engage in the practice of medicine in Respondent's or patient's place  
5 of residence, unless the patient resides in a skilled nursing facility or other similar licensed  
6 facility.

7 License Renewal

8 Respondent shall maintain a current and renewed California Physician's and Surgeon's  
9 license.

10 Travel or Residence Outside California

11 Respondent shall immediately inform the Board or its designee, in writing, of travel to any  
12 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty  
13 (30) calendar days.

14 In the event Respondent should leave the State of California to reside or to practice,  
15 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of  
16 departure and return.

17 11. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be  
18 available in person upon request for interviews either at Respondent's place of business or at the  
19 probation unit office, with or without prior notice throughout the term of probation.

20 12. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
21 its designee in writing within 15 calendar days of any periods of non-practice lasting more than  
22 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is  
23 defined as any period of time Respondent is not practicing medicine as defined in Business and  
24 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct  
25 patient care, clinical activity or teaching, or other activity as approved by the Board. If  
26 Respondent resides in California and is considered to be in non-practice, Respondent shall  
27 comply with all terms and conditions of probation. All time spent in an intensive training  
28 program which has been approved by the Board or its designee shall not be considered non-

1 practice and does not relieve Respondent from complying with all the terms and conditions of  
2 probation. Practicing medicine in another state of the United States or Federal jurisdiction while  
3 on probation with the medical licensing authority of that state or jurisdiction shall not be  
4 considered non-practice. A Board-ordered suspension of practice shall not be considered as a  
5 period of non-practice.

6 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
7 months, Respondent shall successfully complete the Federation of State Medical Board's Special  
8 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program  
9 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model  
10 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

11 Respondent's period of non-practice while on probation shall not exceed two (2) years.

12 Periods of non-practice will not apply to the reduction of the probationary term.

13 Periods of non-practice for a Respondent residing outside of California will relieve  
14 Respondent of the responsibility to comply with the probationary terms and conditions with the  
15 exception of this condition and the following terms and conditions of probation: Obey All Laws;  
16 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or  
17 Controlled Substances; and Biological Fluid Testing.

18 13. COMPLETION OF PROBATION. Respondent shall comply with all financial  
19 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the  
20 completion of probation. Upon successful completion of probation, Respondent's certificate shall  
21 be fully restored.

22 14. VIOLATION OF PROBATION. Failure to fully comply with any term or condition  
23 of probation is a violation of probation. If Respondent violates probation in any respect, the  
24 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
25 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,  
26 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have  
27 continuing jurisdiction until the matter is final, and the period of probation shall be extended until  
28 the matter is final.

15. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

16. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

## ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Dominique A. Pollara, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

**DATED:**

10/30/17

FA'AFUINA SALAPIU AFATO, M.D.  
Respondent

1 I have read and fully discussed with Respondent Fa'afouina Salapiu Afato, M.D. the terms  
2 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
3 Order. I approve its form and content.

4  
5 DATED: 10/31/17

  
6 DOMINIQUE A. POLLARA, ESQ.  
7 Attorney for Respondent


8 ENDORSEMENT

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
10 submitted for consideration by the Medical Board of California.

11 Dated: 11/2/17

Respectfully submitted,

12  
13 XAVIER BECERRA  
14 Attorney General of California  
15 ALEXANDRA M. ALVAREZ  
16 Supervising Deputy Attorney General

  
17 MARA FAUST  
18 Deputy Attorney General  
19 Attorneys for Complainant

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**Exhibit A**

**Accusation and Petition to Revoke Probation No. 800-2015-017406**

AXAVIER BECERRA  
Attorney General of California  
ALEXANDRA M. ALVAREZ  
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BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to  
Revoke Probation Against:

**FA'AFUINA SALAPIU AFATO, M.D.**  
Afato Medical Corporation  
1429 Colusa Avenue, Suite B  
Yuba City, CA 95993

Physician's and Surgeon's Certificate No. G76223,  
Respondent.

Case No. 800-2015-017406

**ACCUSATION AND PETITION  
TO REVOKE PROBATION**

Complainant alleges:

**PARTIES**

1. Kimberly Kirchmeyer (Complainant) brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about April 5, 1993, the Board issued Physician's and Surgeon's Certificate No. G76223 to Fa'afouina Salapiu Afato, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges and allegations brought herein and will expire on April 30, 2017, unless renewed. On July 24, 2013, an Accusation was

1 filed against respondent's certificate which resulted in a Decision dated November 26, 2014,  
2 which placed respondent's certificate on five years of probation with terms and conditions.

### 3 JURISDICTION

4 3. This Accusation and Petition to Revoke Probation is brought before the Board, under  
5 the authority of the following laws. All section references are to the Business and Professions  
6 Code (Code) unless otherwise indicated.

7 Section 2227 of the Code states:

8 "(a) A licensee whose matter has been heard by an administrative law judge  
9 of the Medical Quality Hearing Panel as designated in Section 11371 of the  
10 Government Code, or whose default has been entered, and who is found guilty, or  
11 who has entered into a stipulation for disciplinary action with the board, may, in  
12 accordance with the provisions of this chapter:

13 "(1) Have his or her license revoked upon order of the board.

14 "(2) Have his or her right to practice suspended for a period not to exceed one  
15 year upon order of the board.

16 "(3) Be placed on probation and be required to pay the costs of probation  
17 monitoring upon order of the board.

18 "(4) Be publicly reprimanded by the board. The public reprimand may  
19 include a requirement that the licensee complete relevant educational courses  
20 approved by the board.

21 "(5) Have any other action taken in relation to discipline as part of an order of  
22 probation, as the board or an administrative law judge may deem proper.

23 "(b) Any matter heard pursuant to subdivision (a), except for warning letters,  
24 medical review or advisory conferences, professional competency examinations,  
25 continuing education activities, and cost reimbursement associated therewith that  
26 are agreed to with the board and successfully completed by the licensee, or other  
27 matters made confidential or privileged by existing law, is deemed public, and  
28 shall be made available to the public by the board pursuant to Section 803.1."

1           4.       Section 2234 of the Code, states:

2           “The board shall take action against any licensee who is charged with  
3       unprofessional conduct. In addition to other provisions of this article,  
4       unprofessional conduct includes, but is not limited to, the following:

5           “(a) Violating or attempting to violate, directly or indirectly, assisting in or  
6       abetting the violation of, or conspiring to violate any provision of this chapter.

7           “(b) Gross negligence.

8           “(c) Repeated negligent acts. To be repeated, there must be two or more  
9       negligent acts or omissions. An initial negligent act or omission followed by a  
10      separate and distinct departure from the applicable standard of care shall constitute  
11      repeated negligent acts.

12          “(1) An initial negligent diagnosis followed by an act or omission medically  
13      appropriate for that negligent diagnosis of the patient shall constitute a single  
14      negligent act.

15          “(2) When the standard of care requires a change in the diagnosis, act, or  
16      omission that constitutes the negligent act described in paragraph (1), including,  
17      but not limited to, a reevaluation of the diagnosis or a change in treatment, and the  
18      licensee's conduct departs from the applicable standard of care, each departure  
19      constitutes a separate and distinct breach of the standard of care.

20          “...”

21       5.       Section 2242 of the Code, states, in pertinent part:

22          “Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022  
23      without an appropriate prior examination and a medical indication, constitutes  
24      unprofessional conduct.

25          “...”

26       6.       Section 2266 of the Code states:

27          “The failure of a physician and surgeon to maintain adequate and accurate records  
28      relating to the provision of services to their patients constitutes unprofessional conduct.”



**FIRST CAUSE FOR DISCIPLINE**  
**(Gross Negligence)**

7. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of patients J.D., E.E., L.M., S.R., and A.T. as more particularly alleged hereinafter:

**PATIENT J.D.**

8. On or about July 23, 2012, respondent began treating patient J. D., a forty-two (42) year old male, for chronic migraine headaches. Respondent had previously treated this patient eight years prior, but at some point the patient moved to Denver, Colorado and only returned to California in 2012. The patient was being weaned off methadone which had been prescribed to him in Colorado. At the initial July 23, 2012 appointment, respondent prescribed methadone<sup>1</sup> oral concentrate 10 mg/ml. 3 cc daily, Norco<sup>2</sup> 5/325 mg. 1-2 tid prn and Alprozolam<sup>3</sup> 2mg 1 bid. No full medical history was taken, nor a relevant physical examination.

9. On or about August 13, 2012, patient J.D. was seen by respondent for complaints of lower back pain and migraines. Respondent prescribed Norco 5/325 mg 1-2 tid prn, Zolpidem, fu 1 month and Alprozolam 2mg 1 bid. There is no reference to a history or physical examination being conducted and respondent did not receive the records from the patient's Denver, Colorado methadone treatment.

10. On or about February 27, 2013, respondent noted that the methadone clinic he was co-managing patient J.D.'s methadone weaning with, had recommended referral to a Pain Management specialist. Respondent never made that referral.

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<sup>1</sup> Methadone is a generic name for the drugs Methadose and others. Methadone is classified as a synthetic opiate agonist and substance abuse agent indicated for the treatment of severe pain, opiate dependence and opiate withdrawal. Methadone is a Federal Schedule II controlled substance as designated in Health and Safety Code §11055(c)(14) and is a dangerous drug as defined by California Business and Professions Code §4022.

<sup>2</sup> Norco is a brand name for Hydrocodone, a Schedule III controlled substance pursuant to Health and Safety Code §11056(e), and a dangerous drug pursuant to Business and Professions Code § 4022. This medication is used to treat pain.

<sup>3</sup> Xanax is the brand name for Alprazolam, a Schedule IV controlled substance pursuant to Health and Safety Code §11057(d), and a dangerous drug pursuant to Business and Professions Code §4022. It is an anti-anxiety medication in the benzodiazepine family.

1 11. Between February 13, 2013, and December 30, 2014, patient J.D. received treatment  
2 from respondent for chronic headaches. Throughout that time, respondent repeatedly prescribed  
3 and dispensed methadone, Norco and Xanax to patient J.D. From February 11, 2015 through  
4 March 27, 2015, respondent prescribed Oxycodone APAP<sup>4</sup> 10-20 mgs, and Norco 325/10 mg 4-6  
5 times a day, also for headaches.

6 12. Between February 13, 2013 and March 27, 2015, patient J.D.'s chart notes are brief.  
7 Throughout that time, there is no reference in the patient's chart to a history or physical  
8 examination ever being conducted, no reference to getting a CURES<sup>5</sup> report, no documentation of  
9 a Pain Management Contract, no documentation of a urine drug screen test, nor are there any  
10 charted notes from respondent indicating a referral to a Pain Management specialist or to a  
11 neurologist for a consultation.

12 13. Respondent committed gross negligence in his care and treatment of patient J.D.  
13 which included, but was not limited to the following:

14 (a) Paragraphs 8 through 12, above, are hereby incorporated by reference as if fully  
15 set forth herein;

16 (b) Failing to take or document a complete history and physical exam at any point  
17 during the treatment of patient J.D., as well as failing to obtain the patient's Colorado  
18 methadone treatment records;

19 (c) Failing to obtain a CURES report, and a Pain Management Agreement within  
20 two months of prescribing opiates, and to require drug testing of patient J.D.;

21 ///

22 ///

23 \_\_\_\_\_  
24 <sup>4</sup> Oxycodone with acetaminophen – Generic name for the drugs Endocet, Percocet and others.  
25 Oxycodone with acetaminophen is classified as an analgesic opiate agonist combination product used to  
26 treat moderate to moderately severe pain. Oxycodone with acetaminophen is a Federal Schedule II  
27 controlled substance as designated in Health and Safety Code §11055(b)(1)(m) and is a dangerous drug  
28 pursuant to Business and Professions Code section 4022.

<sup>5</sup> CURES is the Controlled Substances Utilization Review and Evaluation System (CURES), a  
database maintained by the Department of Justice of Schedule II, III and IV controlled substance  
prescriptions dispensed in California, and serving the public health, regulatory oversight agencies, and law  
enforcement.

1 (d) Failing to follow the recommendation of an Addiction Medicine specialist at  
2 the methadone clinic regarding the need for a Pain Management referral for patient J.D.;  
3 and

4 (e) Failing to consider a diagnosis of Medication Overdose, Headaches, or to refer  
5 to a Neurologist for consultation on patient J.D.'s chronic daily headaches that were treated  
6 with daily controlled substances.

7 **PATIENT E.E.**

8 14. On or about August 11, 2011, respondent began treating patient E.E., a fifty-three  
9 (53) year old male, as a new patient who just moved from Arizona. A Pain Management contract  
10 between respondent and patient E.E. exists in the patient record dated August 30, 2011.  
11 Respondent prescribed Percocet 10/350 #300 and Soma<sup>6</sup> 350 #150 to the patient. On or about  
12 September 30, 2011, respondent diagnosed patient E.E. with a chronic pain syndrome, but also  
13 noted the patient suffered from depression. Respondent prescribed Lorazepam<sup>7</sup> 2 mg tid,  
14 Duragesic<sup>8</sup> 75 mcg Q3d #5, Percocet 10/350 #120 and Soma 350 #90. At the next visit on  
15 October 5, 2011, the Duragesic dosage was increased by respondent to 100 mcg/hr for patient  
16 E.E. Again, the patient's depression is noted by respondent.

17 15. Between October 13, 2011, through September 5, 2013, the medications Lorazepam,  
18 Fentanyl, Percocet and Soma continue to be prescribed by respondent. There was no attempt by  
19 respondent to calculate the morphine equivalent dose of the combined Fentanyl patches with the  
20 Percocet. On or about September 11, 2012 respondent ordered a urine drug test of patient E.E.  
21 which was inconsistent for both Percocet and Lorazepam. In addition, there was a positive result

22  
23 <sup>6</sup> Soma, a trade name for Carisoprodol, is a dangerous drug as defined in §4022 of the Code and  
was reclassified as a Schedule IV controlled substance effective January 12, 2012 under Code of Federal  
24 Regulations Title 21 §1308.14(c).

25 <sup>7</sup> Lorazepam is a Schedule IV controlled substance pursuant to Health and Safety Code §11057  
(d), and a dangerous drug pursuant to Business and Professions Code §4022. It is an anti-anxiety  
medication in the benzodiazepine family.

26 <sup>8</sup> Fentanyl – Generic name for the drugs Duragesic and others. Fentanyl is classified as a synthetic  
27 analgesic opiate agonist used to aid induction and maintenance of general anesthesia, to supplement  
regional and spinal analgesia, and to treat chronic and breakthrough moderate to severe pain. Fentanyl is a  
28 Federal Schedule II controlled substance pursuant to Health and Safety Code §11055(c)(8) and a  
dangerous drug pursuant to Business and Professional Code §4022.

1 for marijuana metabolite that was not prescribed. Though the patient was prescribed Fentanyl, the  
2 drug test did not include a test for this drug.

3 16. On or about September 5, 2013, respondent discontinued the Percocet and began  
4 prescribing OxyContin<sup>9</sup> 60 mg #90 in addition to the Fentanyl 100 mcg/hr and the Soma 350 mg  
5 #120. This prescribing pattern by respondent continued until on or about October 24, 2014.  
6 Respondent again did not calculate the morphine equivalent dose of the combined Fentanyl patch  
7 with the prescribed OxyContin. On or about October 29, 2014, a Pain Management specialist  
8 ordered methadone for patient E.E. and requested that respondent decrease the OxyContin dose  
9 down to 40 mg #120 and discontinue the Fentanyl. The Soma prescriptions continued through  
10 January 13, 2015, on a monthly basis at 350 mg #120 or #150.

11 17. On or about April 8, 2014, respondent obtained a Pain Management consultation  
12 where the recommendation was for a further referral to evaluate whether an intrathecal pump for  
13 Pain Management was warranted. Respondent did not see patient E.E. again until August 26,  
14 2014, for medication refills for chronic pain.

15 18. On or about March 19, 2015, at the request of the Pain Management specialist,  
16 respondent discontinued prescribing OxyContin to patient E.E. However, respondent instead  
17 prescribed hydrocodone/APAP 10/325 mg #60 with Carisoprodol from March 19, 2015 through  
18 January 13, 2016.

19 19. Respondent only had a partial medical record for patient E.E. Respondent had no  
20 records for the period of May 11, 2012, through August 26, 2014.

21 20. Respondent committed gross negligence in his care and treatment of patient E.E.  
22 which included, but was not limited to the following:

23 (a) Paragraphs 14 through 19, above, are hereby incorporated by reference as if  
24 fully set forth herein;

25 ///

26  
27 <sup>9</sup> OxyContin, a trade name for the opiate, oxycodone hydrochloride, is a Schedule II controlled  
28 substance as designated in Health and Safety Code §11055(b)(1)(M), and is a dangerous drug as defined in  
§4022 of the Code. It is a pure agonist opioid whose principal therapeutic action is analgesia.

1 (b) Failing to prescribe Soma in adherence with Federal Drug Administration  
2 (FDA) Guidelines which state that Soma should only be used for short periods of time such  
3 as 2-3 weeks due to a lack of effectiveness. Respondent excessively prescribed Soma from  
4 the period it was classified as a controlled substance from January 12, 2012 through  
5 January 13, 2015;

6 (c) Failing to adhere to FDA warnings regarding the prescribing of Lorazepam to  
7 patients who are suffering from depression. Respondent prescribed Lorazepam to patient  
8 E.E. from September 30, 2012 through February 12, 2016.

9 (d) Failing to refer patient E.E. to a Pain Management specialist from August 11,  
10 2011 to April 8, 2014.

11 (e) Failing to refer patient E.E. to a psychiatric specialist when the patient was  
12 suffering from depression/anxiety/stress without responding to treatment.

13 (f) Inappropriately prescribing multiple opioids over a long period of time without  
14 calculating the morphine equivalent doses, particularly with respondent prescribing  
15 Fentanyl patches in combination with either Oxycodone and/or OxyContin to patient E.E.;  
16 and

17 (g) Failing to maintain patient records from May 11, 2012 through August 26,  
18 2014.

19 **PATIENT L.M.**

20 21. On or about July 12, 2013, respondent began treating patient L.M., a fifty-seven (57)  
21 year old female, as her primary care physician. In the patient's history, migraine headaches were  
22 listed, but no current complaint was made about headaches and no medication was prescribed.  
23 On the September 19, 2013 office visit, respondent diagnosed Otagia (ear pain), obstructive sleep  
24 apnea and variants of migraine. Medication prescribed included Ibuprofen 800 mg, Fiorinal 1 qid  
25 prn 120, and Butalbital-Acetaminophen-Caffeine 325-50-40 mg #120<sup>10</sup>.

26 ///

27 <sup>10</sup> Butalbital is a barbiturate and a Schedule IV controlled substance as designated in Health and  
28 Safety Code §11057(d)(2) and is a dangerous drug pursuant to Business and Professions Code §4022.

22. Between October 7, 2013 and July 7, 2015, respondent saw patient L.M. ten times. In this same time period, respondent authorized the Butalbital-Acetaminophen-Caffeine 325-50-40 mg #120 prescription to be filled ten more times at pharmacies. Only on the March 20, 2014 and April 15, 2014 visits did respondent assess migraine headaches yet there was no documented evaluation or assessment. On or about March 31, 2015, respondent wrote under subjective findings "migraine headaches, controlled with medication." Respondent again prescribed Butalbital-Acetaminophen-Caffeine 325-50-40 mg #120. He further authorized refills of this medication that were filled fourteen more times between July 2, 2014 and January 6, 2016.

23. Respondent committed gross negligence in his care and treatment of patient L.M. which included, but was not limited to the following:

(a) Paragraphs 21 through 22, above, are hereby incorporated by reference as if fully set forth herein;

(b) Failing to take or document a complete history at the initiation of treatment and throughout treatment of patient L.M.'s's migraine headaches, or to order prior medical records relating to the patient's migraine headaches; and

(c) Failing to utilize preventative medication (such as topiramate) for patient L.M.'s chronic migraines rather than to utilize Butalbital combination medications that can cause episodic migraines to transition to chronic migraines and cause medication overuse headaches rather than reduce headaches;

#### **PATIENT S.R.**

24. On or about September 17, 2013, patient S.R., a thirty-six (36) year old female, began receiving treatment from respondent as a new patient for Pain Management. Patient S.R. had previously been prescribed hydrocodone, oxycodone and hydromorphone<sup>11</sup> in April 2013 from Dr. L. Respondent diagnosed chronic pain syndrome and referenced wrist pain in his first visit with the patient and refilled her three opioid medications, Dilaudid (hydromorphone) 8 mg #300,

<sup>11</sup> Hydromorphone, an opiate, with the brand name of Dilaudid, is a Schedule II controlled substance as designated in Health and Safety Code §11055 (b)(1)(J) and a dangerous drug pursuant to Business and Professions Code §4022.

1 Oxycodone 30 mg 240 #60 and Norco (hydrocodone) 325/10 mg. These prescriptions were  
2 extended through December 2013.

3 25. Respondent received a urine drug screen on patient S.R., dated December 4, 2013.  
4 No oxycodone metabolite was detected, but morphine and marijuana were detected. At the next  
5 appointment of January 2, 2013 respondent failed to discuss the inconsistent drug screen with the  
6 patient.

7 26. Respondent prescribed hydrocodone/APAP 325/10 #60, oxycodone 30 mg #240 and  
8 hydromorphone #300 fifteen times between from October 17, 2013 through December 16, 2014  
9 to patient S.R. Thereafter, respondent stopped the hydrocodone but continued prescribing the  
10 oxycodone and hydromorphone three times from January 12, 2015 through March 9, 2015. On  
11 4/16/2015 respondent prescribed OxyContin 60 mg # 60 to patient S.R. From May 15, 2015  
12 respondent prescribed hydromorphone #300 monthly to patient S.R. through December 23, 2015.  
13 On November 17, 2015 an MRI of the Thoracic Spine showed mild degenerative changes.  
14 Respondent began prescribing zolpidem<sup>12</sup> 10 mg #30 monthly from November 15, 2013 through  
15 August 8, 2015.

16 27. On a visit dated January 20, 2016, respondent noted that patient S.R. was  
17 experiencing a lot of back pain with sciatica symptoms and reordered hydromorphone 8 mg #300  
18 and restarted oxycodone 30 mg #60. On or about February 23, 2016, respondent obtained a urine  
19 drug screen on patient S.R. where no oxycodone or its metabolites were detected.

20 28. Respondent committed gross negligence in his care and treatment of patient S.R.  
21 which included, but was not limited to the following:

22 (a) Paragraphs 24 through 27, above, are hereby incorporated by reference as if  
23 fully set forth herein;

24 (b) Prescribing excessive amounts of zolpidem where the maximum dosage for  
25 women should not exceed 5 mgs.;

26 <sup>12</sup> Zolpidem, whose trade name is Ambien is a Schedule IV controlled substance as designated in  
27 Health and Safety Code §11057(d)(32) and a dangerous drug pursuant to Business and Professions Code  
28 §4022. In 2013, the FDA required manufactures to decrease the recommended dose by half for women  
due to next morning drowsiness tied to auto accidents.

1 (c) Overprescribing opioids to a non-cancer patient who complains of chronic  
2 musculoskeletal pain; and

3 (d) Failing to act on inconsistent drug urine screens and to continue to prescribe  
4 opioids for pain despite the inconsistent urine screens.

5 **PATIENT A.T.**

6 29. On or about July 24, 2012, patient A.T., a twenty-three (23) year old female, began  
7 receiving treatment from respondent as a new patient who suffered from diabetes mellitus, neck  
8 pain, and muscle spasm. On or about May 8, 2013 respondent saw the patient for nerve pain and  
9 diagnosed chronic pain of diabetic neuropathy. Patient reported her pain was not controlled on  
10 Gabapentin<sup>13</sup> 1500 mg a day. Respondent's plan was to wean patient A.T. off the Gabapentin,  
11 and continue her Pain Management medication of Vicodin<sup>14</sup>, prescribed by patient's podiatrist  
12 and add Lyrica<sup>15</sup> 75 mg. On or about June 6, 2013, patient A.T. still was having diabetic nerve  
13 pain and she was experiencing side effects from the Lyrica. Respondent switched her back to  
14 Gabapentin and added Percocet 5/325 mg #50 and Butrans<sup>16</sup> 5 mcg/hr #4 patch for pain.

15 30. From June 19, 2013 through August 22, 2013 respondent prescribed the following  
16 opioids for patient A.T.'s diabetic neuropathy: Butrans 10 mcg/hr #4 approximately every two  
17 weeks and Oxycodone/APAP 5/325 mg approximately two pills a day, usually #120. From  
18 August 22, 2013 through September 3, 2013, respondent increased the Butrans patches  
19 prescription to patient A.T. to 20 mcg/hr #4 and continued prescribing the Oxycodone/APAP  
20 5/325 mg #120 to treat her diabetic neuropathy. On September 3, 2013 Fentanyl 25 mcg/hr #15  
21 was added to treat the patients diabetic neuropathy. From September 19, 2013 through October  
22 22, 2013 respondent added OxyContin 40-60 mg, # 90-120 and switched the Oxycodone APAP

23 <sup>13</sup> Gabapentin, known under the brand name Neurontin is used to treat neuropathic pain and is a  
24 dangerous drug pursuant to Business and Professions Code §4022.

25 <sup>14</sup> Vicodin, a brand name for Hydrocodone Bitartrate and Acetaminophen a Schedule III controlled  
26 substance pursuant to Health and Safety Code §11056(e), and a dangerous drug pursuant to Business and  
27 Professions Code § 4022. This medication is used to treat pain.

28 <sup>15</sup> Lyrica, a brand name for pregabalin is a medication used to treat neuropathic pain and is a  
dangerous drug pursuant to Business and Professions Code §4022

<sup>16</sup> Butrans, a brand name for buprenorphine, a Schedule III controlled substance pursuant to  
Health and Safety Code §11056(d) and 21 CFR §1308(e) and a dangerous drug pursuant to Business and  
Professions Code § 4022. It is an opioid used to treat chronic pain.



1 to Oxycodone 30 mg #90-120, as well as continuing to prescribe Butrans 20 mcg/hr #4, all for the  
2 patients diabetic neuropathy.

3 31. Respondent committed gross negligence in his care and treatment of patient A.T.  
4 which included, but was not limited to the following:

5 (a) Paragraphs 29 through 30, above, are hereby incorporated by reference as if  
6 fully set forth herein;

7 (b) Inappropriate prescribing of opioids primarily to treat patient A.T.'s diabetic  
8 neuropathy and his failure to prescribe antidepressants and anticonvulsants.

9 **SECOND CAUSE FOR DISCIPLINE**  
10 **(Repeated Negligent Acts)**

11 32. Respondent is further subject to disciplinary action under sections 2227 and 2234, as  
12 defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent  
13 acts in his care and treatment of patients J.D., E.E., L.M., S.R., and A.T. as more particularly  
14 alleged hereinafter:

15 (a) Paragraphs 8 through 31, above, are hereby incorporated by reference and re-  
16 alleged as if fully set forth herein;

17 (b) Failing to take or document a complete history and physical exam at any point  
18 during the treatment of patient J.D., as well as obtaining the patient's Colorado methadone  
19 treatment records;

20 (c) Failing to obtain a CURES report, obtain a Pain Management Agreement  
21 within two months of prescribing opiates, and require drug testing of patient J.D.;

22 (d) Failing to follow the recommendation of an Addiction Medicine specialist at  
23 the methadone clinic regarding the need for a Pain Management referral for patient J.D.;

24 (e) Failing to consider a diagnosis of Medication Overdose Headaches or to refer to  
25 a Neurologist for consultation on patient J.D.'s chronic daily headaches that were treated  
26 with daily controlled substances;

27 (f) Failing to prescribe Soma in adherence with Federal Drug Administration  
28 (FDA) Guidelines which state that Soma should only be used for short periods of time such

1 as 2-3 weeks due to a lack of effectiveness. Respondent excessively prescribed Soma from  
2 the period it was classified as a controlled substance from January 12, 2012 through  
3 January 13, 2015;

4 (g) Failing to adhere to FDA warnings regarding the prescribing of Lorazepam to  
5 patients who are suffering from depression. Respondent prescribed Lorazepam to patient  
6 E.E. from September 30, 2012 through February 12, 2016;

7 (h) Failing to refer patient E.E. to a Pain Management specialist from August 11,  
8 2011 to April 8, 2014;

9 (i) Failing to refer patient E.E. to a psychiatric specialist when the patient was  
10 suffering from depression/anxiety/stress without responding to treatment;

11 (j) Inappropriately prescribing multiple opioids over a long period of time without  
12 calculating the morphine equivalent doses, particularly with respondent prescribing  
13 Fentanyl patches in combination with either Oxycodone and/or OxyContin to patient E.E.;

14 (k) Failing to maintain patient records from May 11, 2012 through August 26, 2014  
15 for patient E.E.;

16 (l) Failing to take or document a complete history at the initiation of treatment and  
17 throughout treatment of patient L.M.'s migraine headaches, or to order prior medical  
18 records relating to the patient's migraine headaches;

19 (m) Failing to utilize preventative medication (such as topiramate) for patient  
20 L.M.'s chronic migraines rather than to utilize Butalbital combination medications that can  
21 cause episodic migraines to transition to chronic migraines and cause medication overuse  
22 headaches;

23 (n) Prescribing excessive amounts of zolpidem to patient S.R. where the maximum  
24 dosage for women should not exceed 5 mgs.;

25 (o) Overprescribing opioids to patient S.R., a non-cancer patient who complains of  
26 chronic musculoskeletal pain;

27 (p) Failing to act on patient S.R.'s inconsistent drug urine screen and to continue to  
28 prescribe opioids for pain despite the inconsistent urine screens; and

1 (q) Inappropriate prescribing of opioids primarily to treat patient A.T.'s diabetic  
2 neuropathy and his failure to prescribe antidepressants and anticonvulsants.

3 **THIRD CAUSE FOR DISCIPLINE**  
4 **(Furnishing Dangerous Drugs Without Exam)**

5 33. Respondent is further subject to disciplinary action under sections 2227 and 2234, as  
6 defined by section 2242, of the Code, in that he prescribed, dispensed, or furnished dangerous  
7 drugs without an appropriate prior examination and medical indication relating to his care and  
8 treatment of patient J.D., as more particularly alleged in paragraphs 8 through 13 above, which  
9 are hereby incorporated by reference and re-alleged as if fully set forth herein.

10 **FOURTH CAUSE FOR DISCIPLINE**  
11 **(Failure to Maintain Adequate and Accurate Records)**

12 34. Respondent is further subject to disciplinary action under sections 2227 and 2234, as  
13 defined by section 2266, of the Code, in that he failed to maintain adequate and accurate records  
14 relating to his care and treatment of patient J.D., E.E., L.M., S.R., and A.T., as more particularly  
15 alleged in paragraphs 8 through 31 above, which are hereby incorporated by reference and re-  
16 alleged as if fully set forth herein.

17 **FIRST CAUSE FOR REVOCATION OF PROBATION**

18 35. Complainant re-alleges paragraphs 8 through 32 of the Accusation and Petition to  
19 Revoke Probation, and incorporates them by reference as if fully set forth herein.

20 36. On or about On July 24, 2013, an Accusation was filed against Respondent charging  
21 violations of code sections 2234, subdivision (b), and subdivision (c). Thereafter, on or about  
22 November 26, 2014, respondent's Physician's and Surgeon's Certificate was disciplined, in a  
23 prior action entitled, *In the matter of the Accusation Against Fa'Afouina Salapiu Afato, M.D.*,  
24 before the Medical Board of California, in Case N. 02-2011-214348. A true and correct copy of  
25 the Decision in Case No. 02-2011-214348 is attached hereto as Exhibit 1 and incorporated herein.  
26 Pursuant to the Decision and order, respondent's Physician's and Surgeon's Certificate was  
27 revoked, the revocation was stayed, and respondent was placed on probation for five (5) years.  
28 The Decision and order contained, *inter alia*, the following terms:

1 37. OBEY ALL LAWS

2 Respondent shall obey all federal, state and local laws, all rules governing the practice of  
3 medicine in California and remain in full compliance with any court ordered criminal probation,  
4 payments, and other reports.

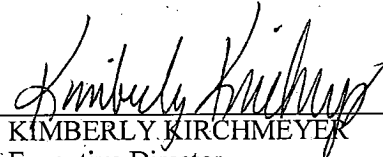
5 38. Respondent's conduct as set forth in paragraphs 8 through 32 above, in violation of  
6 Code sections 2234, subdivision (b), and (c) has subjected him to revocation of probation,  
7 imposition of previously stayed disciplinary terms, and/or further disciplinary proceedings.

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
10 and that following the hearing, the Medical Board of California issue a decision:

- 11 1. Revoking the probation previously granted to respondent Fa'afouina Salapiu Afato  
12 M.D., in the Decision in Case No. 02-2011-214348;
- 13 2. Revoking or suspending Physician's and Surgeon's Certificate No. G76223, issued to  
14 respondent Fa'afouina Salapiu Afato, M.D.;
- 15 3. Revoking, suspending, or denying approval of respondent Fa'afouina Salapiu Afato,  
16 M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
- 17 4. Ordering respondent Fa'afouina Salapiu Afato, M.D., if placed on probation, to pay  
18 the Board the costs of probation monitoring; and
- 19 5. Taking such other and further action as deemed necessary and proper.

20  
21 DATED: March 9, 2017

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
Complainant

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**Exhibit 1**

**Decision – 02-2011-214348**

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against: )

FA'AFUINA SALAPIU AFATO, M.D. )

MBC File # 02-2011-214348

Physician's & Surgeon's )

Certificate No. G 76223 )

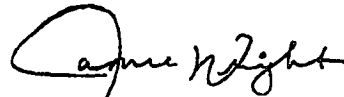
\_\_\_\_\_  
Respondent. )

**ORDER CORRECTING NUNC PRO TUNC  
CLERICAL ERROR IN "LICENSE NUMBER" PORTION OF DECISION**

On its own motion, the Medical Board of California (hereafter "board") finds that there is a clerical error in the "license number" portion of the Decision in the above-entitled matter and that such clerical error should be corrected so that the license number will conform to the Board's issued license.

IT IS HEREBY ORDERED that the license number contained on Pages 1 through 3 of the Decision in the above-entitled matter be and hereby is amended and corrected nunc pro tunc as of the date of entry of the decision to read as "G 76223."

DATED: October 5, 2017



\_\_\_\_\_  
Jamie Wright, J.D., Chair  
Panel A

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against: )

FA'AFUINA SALAPIU AFATO, M.D. )

Case No. 02-2011-214348

Physician's and Surgeon's  
Certificate No. G 76223 )

Respondent. )  
\_\_\_\_\_ )

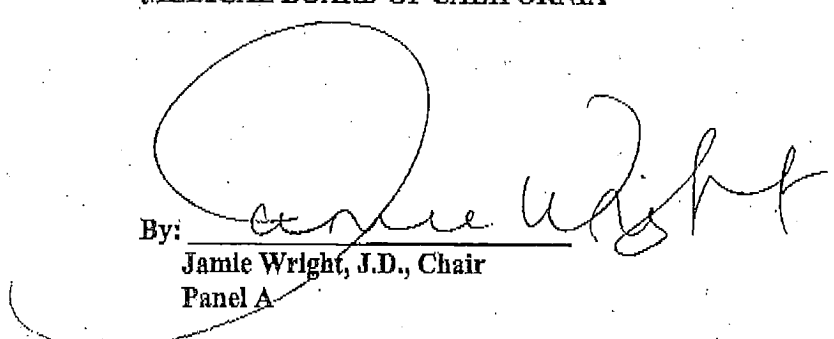
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Medical Board of California, Department of Consumer Affairs, State of California, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on November 26, 2014.

IT IS SO ORDERED October 29, 2014.

MEDICAL BOARD OF CALIFORNIA

By:   
\_\_\_\_\_  
Jamie Wright, J.D., Chair  
Panel A

1 KAMALA D. HARRIS  
Attorney General of California  
2 ROBERT MCKIM BELL  
Supervising Deputy Attorney General  
3 RANDALL R. MURPHY  
Deputy Attorney General  
4 State Bar No. 165851  
300 South Spring Street, Suite 1702  
5 Los Angeles, California 90013  
Telephone: (213) 897-2493  
6 Facsimile: (213) 897-9395  
*Attorneys for Complainant*  
7

8 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 02-2011-214348

11 FA'AFΟΥINA SALAPIU AFATO, M.D.

OAH Case No. 2013090843

12 1429 Colusa Avenue, Suite B  
13 Yuba City, California 95993

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

14 Physician's and Surgeon's Certificate No. E  
15 2095,

16 Respondent.  
17

18 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-  
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical  
22 Board of California ("Board"). She brought this action solely in her official capacity and is  
23 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by  
24 Randall R. Murphy, Deputy Attorney General.

25 2. Respondent Fa'afouina Salapiu Afato, M.D. ("Respondent") is represented in this  
26 proceeding by attorney Philip R. Birney whose address is 400 Capitol Mall, 22nd Floor,  
27 Sacramento, California 95814.  
28



3. On April 5, 1993, the Board issued Physician's and Surgeon's Certificate number E 2095 to Fa'afouina Salapiu Afato, M.D. That license was in full force and effect at all times relevant to the charges brought in Accusation No. 02-2011-214348 and will expire on April 30, 2015, unless renewed.

## JURISDICTION

4. Accusation No. 02-2011-214348 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 24, 2013. Respondent timely filed a Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 02-2011-214348 is attached as Exhibit A and is incorporated herein by reference.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 02-2011-214348. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 02-2011-214348.

10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

#### CONTINGENCY

11. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

#### DISCIPLINARY ORDER

**IT IS HEREBY ORDERED THAT** Physician's and Surgeon's Certificate number E 2095 issued to Respondent Fa'afouina Salapiu Afato, M.D. (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. REVOCATION - MULTIPLE CAUSES. Certificate No. E 2095 issued to Respondent Fa'afouina Salapiu Afato, M.D. is revoked pursuant to determination of Issues I, II, III, and IV, separately and for all of them.

2. STANDARD STAY ORDER. However, revocation stayed and Respondent is placed on probation for five years upon the following terms and conditions.

3. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 60 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 85 hours of CME of which 60 hours were in satisfaction of this condition.

4. CLINICAL TRAINING PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ("Program"). Respondent shall successfully complete the Program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of Respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to Respondent's area of practice in which Respondent was alleged to be deficient, and at minimum, a 40 hour program of clinical education in the area of practice in which Respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on Respondent's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the

1 scope and length of any additional educational or clinical training, treatment for any medical  
2 condition, treatment for any psychological condition, or anything else affecting Respondent's  
3 practice of medicine. Respondent shall comply with Program recommendations.

4 At the completion of any additional educational or clinical training, Respondent shall  
5 submit to and pass an examination. Determination as to whether Respondent successfully  
6 completed the examination or successfully completed the program is solely within the program's  
7 jurisdiction. A medical record keeping course taken after the acts that gave rise to the charges in  
8 the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the  
9 Board or its designee, be accepted towards the fulfillment of this condition if the course would  
10 have been approved by the Board or its designee had the course been taken after the effective date  
11 of this Decision.

12 Respondent shall submit a certification of successful completion to the Board or its  
13 designee not later than 15 calendar days after successfully completing the course, or not later than  
14 15 calendar days after the effective date of the Decision, whichever is later.

15 A Physician Assessment and Clinical Education Program taken after the acts that gave rise  
16 to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole  
17 discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the  
18 program would have been approved by the Board or its designee had the program been taken after  
19 the effective date of this Decision.

20 If Respondent fails to enroll, participate in, or successfully complete the clinical training  
21 program within the designated time period, Respondent shall receive a notification from the  
22 Board or its designee to cease the practice of medicine within three (3) calendar days after being  
23 so notified. The Respondent shall not resume the practice of medicine until enrollment or  
24 participation in the outstanding portions of the clinical training program have been completed. If  
25 the Respondent did not successfully complete the clinical training program, the Respondent shall  
26 not resume the practice of medicine until a final decision has been rendered on the accusation  
27 and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of  
28 the probationary time period.

1 Within 30 calendar days of the effective date of this Decision, Respondent shall participate  
2 in a professional enhancement program (PEP) equivalent to the one offered by the Physician  
3 Assessment and Clinical Education Program at the University of California, San Diego School of  
4 Medicine, which shall include quarterly chart review, semi-annual practice assessment, and semi-  
5 annual review of professional growth and education. Respondent shall participate in the PEP at  
6 Respondent's expense during the term of probation, or until the Board or its designee determines  
7 that further participation is no longer necessary.

8 5. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this  
9 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice  
10 monitor, the name and qualifications of one or more licensed physicians and surgeons whose  
11 licenses are valid and in good standing, and who are preferably American Board of Medical  
12 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal  
13 relationship with Respondent, or other relationship that could reasonably be expected to  
14 compromise the ability of the monitor to render fair and unbiased reports to the Board, including  
15 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree  
16 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

17 The Board or its designee shall provide the approved monitor with copies of the Decision(s)  
18 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the  
19 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed  
20 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role  
21 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees  
22 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the  
23 signed statement for approval by the Board or its designee.

24 Within 60 calendar days of the effective date of this Decision, and continuing throughout  
25 probation, Respondent's practice shall be monitored by the approved monitor until such time as  
26 the monitor advises the Board in writing that Respondent no longer needs monitoring.  
27 Respondent shall make all records available for immediate inspection and copying on the  
28 premises by the monitor at all times during business hours and shall retain the records for the

1 entire term of probation.

2 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective  
3 date of this Decision, Respondent shall receive a notification from the Board or its designee to  
4 cease the practice of medicine within three (3) calendar days after being so notified. Respondent  
5 shall cease the practice of medicine until a monitor is approved to provide monitoring  
6 responsibility.

7 The monitor(s) shall submit a quarterly written report to the Board or its designee which  
8 includes an evaluation of Respondent's performance, indicating whether Respondent's practices  
9 are within the standards of the practice of medicine, and whether Respondent is practicing  
10 medicine safely. It shall be the sole responsibility of Respondent to ensure that the monitor  
11 submits the quarterly written reports to the Board or its designee within 10 calendar days after the  
12 end of the preceding quarter.

13 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of  
14 such resignation or unavailability, submit to the Board or its designee, for prior approval, the  
15 name and qualifications of a replacement monitor who will be assuming that responsibility within  
16 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60  
17 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a  
18 notification from the Board or its designee to cease the practice of medicine within three (3)  
19 calendar days after being so notified Respondent shall cease the practice of medicine until a  
20 replacement monitor is approved and assumes monitoring responsibility.

21 In lieu of a monitor, Respondent may participate in a professional enhancement program  
22 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the  
23 University of California, San Diego School of Medicine, that includes, at minimum, quarterly  
24 chart review, semi-annual practice assessment, and semi-annual review of professional growth  
25 and education. Respondent shall participate in the professional enhancement program at  
26 Respondent's expense during the term of probation.

27 6. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the  
28 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice

1 where: 1) Respondent merely shares office space with another physician but is not affiliated for  
2 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that  
3 location.

4 If Respondent fails to establish a practice with another physician or secure employment in  
5 an appropriate practice setting within 60 calendar days of the effective date of this Decision,  
6 Respondent shall receive a notification from the Board or its designee to cease the practice of  
7 medicine within three (3) calendar days after being so notified. The Respondent shall not resume  
8 practice until an appropriate practice setting is established.

9 If, during the course of the probation, the Respondent's practice setting changes and the  
10 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent  
11 shall notify the Board or its designee within 5 calendar days of the practice setting change. If  
12 Respondent fails to establish a practice with another physician or secure employment in an  
13 appropriate practice setting within 60 calendar days of the practice setting change, Respondent  
14 shall receive a notification from the Board or its designee to cease the practice of medicine within  
15 three (3) calendar days after being so notified. The Respondent shall not resume practice until an  
16 appropriate practice setting is established.

17 7. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the  
18 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the  
19 Chief Executive Officer at every hospital where privileges or membership are extended to  
20 Respondent, at any other facility where Respondent engages in the practice of medicine,  
21 including all physician and locum tenens registries or other similar agencies, and to the Chief  
22 Executive Officer at every insurance carrier which extends malpractice insurance coverage to  
23 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15  
24 calendar days.

25 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

26 8. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is  
27 prohibited from supervising physician assistants.

28 9. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules

governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

10. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

11. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.



1 In the event Respondent should leave the State of California to reside or to practice  
2 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of  
3 departure and return.

4 ~~12.~~ INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be  
5 available in person upon request for interviews either at Respondent's place of business or at the  
6 probation unit office, with or without prior notice throughout the term of probation.

7 13. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
8 its designee in writing within 15 calendar days of any periods of non-practice lasting more than  
9 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is  
10 defined as any period of time Respondent is not practicing medicine in California as defined in  
11 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month  
12 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All  
13 time spent in an intensive training program which has been approved by the Board or its designee  
14 shall not be considered non-practice. Practicing medicine in another state of the United States or  
15 Federal jurisdiction while on probation with the medical licensing authority of that state or  
16 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall  
17 not be considered as a period of non-practice.

18 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
19 months, Respondent shall successfully complete a clinical training program that meets the criteria  
20 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and  
21 Disciplinary Guidelines" prior to resuming the practice of medicine.

22 Respondent's period of non-practice while on probation shall not exceed two (2) years.

23 Periods of non-practice will not apply to the reduction of the probationary term.

24 Periods of non-practice will relieve Respondent of the responsibility to comply with the  
25 probationary terms and conditions with the exception of this condition and the following terms  
26 and conditions of probation: Obey All Laws; and General Probation Requirements.

27 14. COMPLETION OF PROBATION. Respondent shall comply with all financial  
28 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the

1 completion of probation. Upon successful completion of probation, Respondent's certificate shall  
2 be fully restored.

3 15. VIOLATION OF PROBATION. Failure to fully comply with any term or condition  
4 of probation is a violation of probation. If Respondent violates probation in any respect, the  
5 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
6 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,  
7 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have  
8 continuing jurisdiction until the matter is final, and the period of probation shall be extended until  
9 the matter is final.

10 16. LICENSE SURRENDER. Following the effective date of this Decision, if  
11 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy  
12 the terms and conditions of probation, Respondent may request to surrender his or her license.  
13 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in  
14 determining whether or not to grant the request, or to take any other action deemed appropriate  
15 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
16 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its  
17 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject  
18 to the terms and conditions of probation. If Respondent re-applies for a medical license, the  
19 application shall be treated as a petition for reinstatement of a revoked certificate.

20 17. PROBATION MONITORING COSTS. Respondent shall pay the costs associated  
21 with probation monitoring each and every year of probation, as designated by the Board, which  
22 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of  
23 California and delivered to the Board or its designee no later than January 31 of each calendar  
24 year.

#### 25 ACCEPTANCE

26 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
27 discussed it with my attorney, Philip R. Birney. I understand the stipulation and the effect it will  
28 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and

1 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
2 Decision and Order of the Medical Board of California.

3  
4 DATED: 8/8/2014

5 FA'AFUINA SALAPIU AFATO, M.D.  
6 Respondent

7 I have read and fully discussed with Respondent Fa'afuina Salapiu Afato, M.D. the terms  
8 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
9 Order. I approve its form and content.

10 DATED: August 14, 2014

11 PHILIP R. BRANEY  
12 Attorney for Respondent

13 ENDORSEMENT

14 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
15 submitted for consideration by the Medical Board of California.

16  
17 Dated:

Respectfully submitted,

18 KAMALA D. HARRIS  
19 Attorney General of California  
20 ROBERT MCKIM BELL  
21 Supervising Deputy Attorney General

22 RANDALL R. MUREHY  
23 Deputy Attorney General  
24 Attorneys for Complainant

25  
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28

1 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
2 Decision and Order of the Medical Board of California.

3  
4 DATED: \_\_\_\_\_

5 FA'AFUINA SALAPIU AFATO, M.D.  
6 Respondent

7 I have read and fully discussed with Respondent Fa'afouina Salapiu Afato, M.D. the terms  
8 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
9 Order. I approve its form and content.

10 DATED: \_\_\_\_\_

11 Philip R. Birney  
12 Attorney for Respondent

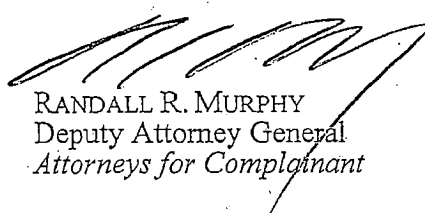
13 ENDORSEMENT

14 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
15 submitted for consideration by the Medical Board of California.

16  
17 Dated: 8/6/14

Respectfully submitted,

18 KAMALA D. HARRIS  
19 Attorney General of California  
20 ROBERT MCKIM BELL  
21 Supervising Deputy Attorney General

22   
23 RANDALL R. MURPHY  
24 Deputy Attorney General  
25 Attorneys for Complainant

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**Exhibit A**

**Accusation No. 02-2011-214348**

1 KAMALA D. HARRIS  
Attorney General of California  
2 ROBERT MCKIM BELL  
Supervising Deputy Attorney General  
3 RANDALL R. MURPHY  
Deputy Attorney General  
4 State Bar No. 165851  
California Department of Justice  
5 300 South Spring Street, Suite 1702  
Los Angeles, California 90013  
6 Telephone: (213) 897-2493  
Facsimile: (213) 897-9395  
7 *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO July 24, 2013  
BY: [Signature] ANALYST

8 BEFORE THE  
9 MEDICAL BOARD OF CALIFORNIA  
10 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 02-2011-214348

12 FA'AFOUNA SALAPIU AFATO, M.D.  
Afato Medical Corporation  
13 1429 Colusa Avenue, Suite B  
Yuba City, California 95993

ACCUSATION

14 Physician's and Surgeon's Certificate  
15 No. G76223,

16 Respondent.

17  
18 Complainant alleges:

19 PARTIES

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official  
21 capacity as the Interim Executive Director of the Medical Board of California (Board).

22 2. On or about April 5, 1993, the Board issued Physician's and Surgeon's Certificate  
23 number G76223 to Fa'afouina Salapiu Afato, M.D. (Respondent). That license was in full force  
24 and effect at all times relevant to the charges brought in this Accusation and will expire on April  
25 30, 2015, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Board under the authority of the following  
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. The Medical Practice Act ("MPA") is codified at sections 2000-2521 of the Business  
2 and Professions Code.

3 5. Pursuant to Code section 2001.1, the Board's highest priority is public protection.

4 6. Code section 2227, subdivision (a), provides as follows:

5 "(a) A licensee whose matter has been heard by an administrative law  
6 judge of the Medical Quality Hearing Panel as designated in Section 11371 of the  
7 Government Code, or whose default has been entered, and who is found guilty, or  
8 who has entered into a stipulation for disciplinary action with the board, may, in  
9 accordance with the provisions of this chapter:

8 "(1) Have his or her license revoked upon order of the board.

9 "(2) Have his or her right to practice suspended for a period not to exceed  
10 one year upon order of the board.

11 "(3) Be placed on probation and be required to pay the costs of probation  
12 monitoring upon order of the board.

13 "(4) Be publicly reprimanded by the board. The public reprimand may  
14 include a requirement that the licensee complete relevant educational courses  
15 approved by the board.

16 "(5) Have any other action taken in relation to discipline as part of an  
17 order of probation, as the board or an administrative law judge may deem proper.

18 "(b) Any matter heard pursuant to subdivision (a), except for warning  
19 letters, medical review or advisory conferences, professional competency  
20 examinations, continuing education activities, and cost reimbursement associated  
21 therewith that are agreed to with the board and successfully completed by the  
22 licensee, or other matters made confidential or privileged by existing law, is deemed  
23 public, and shall be made available to the public by the board pursuant to Section  
24 803.1."

25 7. Section 2234 reads, in relevant part, as follows:

26 "The board shall take action against any licensee who is charged with  
27 unprofessional conduct. In addition to other provisions of this article, unprofessional  
28 conduct includes, but is not limited to, the following:

23 "...

24 "(b) Gross negligence.

25 "(c) Repeated negligent acts. To be repeated, there must be two or more  
26 negligent acts or omissions. An initial negligent act or omission followed by a  
27 separate and distinct departure from the applicable standard of care shall constitute  
28 repeated negligent acts.

29 "(1) An initial negligent diagnosis followed by an act or omission  
30 medically appropriate for that negligent diagnosis of the patient shall constitute a  
31 single negligent act.

1           “(2) When the standard of care requires a change in the diagnosis, act, or  
2           omission that constitutes the negligent act described in paragraph (1), including, but  
3           not limited to, a reevaluation of the diagnosis or a change in treatment, and the  
4           licensee’s conduct departs from the applicable standard of care, each departure  
5           constitutes a separate and distinct breach of the standard of care.”

6           8.     California Code of Regulations, title 16, section 1399.541 states, in pertinent part:

7           “Because physician assistant practice is directed by a supervising physician, and a  
8           physician assistant acts as an agent for that physician, the orders given and tasks performed by a  
9           physician assistant shall be considered the same as if they had been given and performed by the  
10          supervising physician. Unless otherwise specified in these regulations or in the delegation or  
11          protocols, these orders may be initiated without the prior patient specific order of the supervising  
12          physician.”

### 13                               CONTROLLED SUBSTANCES/DANGEROUS DRUGS

14          9.     Code section 4021 states:

15          “Controlled substance’ means any substance listed in chapter 2 (commencing with Section  
16          11053) of Division 10 of the Health and Safety Code.”

17          10.    Code section 4022 provides:

18          “Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in  
19          humans or animals, and includes the following:

20               -“(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
21               prescription,’ ‘Rx only’ or words of similar import.

22               “(b) Any device that bears the statement: ‘Caution: federal law restricts this device to sale  
23               by or on the order of a \_\_\_\_\_,’ ‘Rx only,’ or words of similar import . . .

24               “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
25               prescription or furnished pursuant to Section 4006.”

26          11.    Norco is a Schedule III controlled substance as designated by Health and Safety Code  
27          section 11056, and a dangerous drug under Code section 4022. It is used to treat moderate to  
28          severe pain.

            12.    Lisinopril is used to treat high blood pressure (hypertension), congestive heart failure,  
            and to improve survival after a heart attack. It is a dangerous drug under Code section 4022.



13. Baclofen is a muscle relaxer and an antispastic agent. Baclofen is primarily used for the treatment of spastic movement disorders, especially in instances of spinal cord injury, cerebral palsy, and multiple sclerosis. It is a dangerous drug under Code section 4022.

PATIENT K.B.

14. At the time that Patient K.B.<sup>1</sup> initially presented to Respondent's office on March 31, 2009, she was a 37-year-old female seeking treatment for a post-operative wound dehiscence<sup>2</sup> resulting from cervical fusion surgery. K.B. was also concerned about elevated blood pressure, and Respondent changed K.B.'s blood pressure medication. Respondent ordered labs to be drawn and told K.B. to follow up in two weeks.

15. K.B.'s next visit to Respondent's office was on May 1, 2009. She was seen by a physician assistant for flu-like symptoms, including nausea, vomiting, fever, cough, body aches, diarrhea, and a worsening sore throat. K.B. was diagnosed with pharyngitis<sup>3</sup> and nausea and was prescribed Azithromycin<sup>4</sup>, Phenergan<sup>5</sup>, Tylenol, and Vicodin. The documentation from this visit does not indicate that her previous lab results were reviewed or discussed.

16. K.B. contacted Respondent the next day, May 2, 2009, because she was experiencing vomiting, dizziness, and shortness of breath. Respondent told K.B. to come in for an evaluation, which she did. Respondent saw K.B. during this visit. Vital signs are not noted in the documentation from this visit. There is only reference to an increased respiratory rate and an oxygen saturation of 83%. There is no reference to whether K.B. was on oxygen or room air.

---

<sup>1</sup> Patient and Provider names are abbreviated in this Accusation to protect patient confidentiality. Full patient names will be provided upon receipt of a Request for Discovery.

<sup>2</sup> Wound dehiscence is a previously closed wound reopening due to the total disintegration of mechanical bonding of the wound brought about by influences not totally understood.

<sup>3</sup> An inflammation of the throat or pharynx.

<sup>4</sup> Azithromycin is an azalide, a subclass of macrolide antibiotics. Azithromycin is one of the world's best-selling antibiotics and is sold in the United States under the name Zithromax.

<sup>5</sup> Phenergan is a first-generation H1 receptor antagonist of the phenothiazine chemical class used medically as an antihistamine antiemetic.

Respondent gave K.B. a breathing treatment with duoneb<sup>6</sup>, and K.B. showed no improvement in her elevated respiratory rate, although her actual rate was not documented. Respondent documented that K.B. had poor technique in using a metered dose inhaler. He determined that K.B. had chronic obstructive pulmonary disease ("COPD") exacerbation and bronchitis. He attributed K.B.'s nausea and vomiting to the Azithromycin, although he noted that she had previously been able to tolerate Azithromycin.

17. Respondent's treatment plan for K.B. was to stop the Azithromycin and start Levaquin<sup>7</sup>. Respondent noted that K.B. might need home oxygen therapy, but that K.B. refused. Respondent also noted that a chest X-ray was deferred. K.B. was sent home with Phenergan for nausea and an Albuterol inhaler with a spacer. Respondent encouraged K.B. to stop smoking and told her to return to the office if she was not better, or to go to the emergency room. K.B. denies that Respondent told her to go the emergency room.

18. K.B. was upset about Respondent's message to stop smoking, and she left the exam room. Respondent spoke to K.B.'s husband about taking K.B. to the emergency room. Respondent trusted that K.B.'s husband would take her to the emergency room because he was a peace officer. Respondent did not place any calls to the local emergency room to inform them that K.B. was coming, nor did he make arrangements to transport K.B. to the nearest emergency room.

19. On May 3, 2009, K.B. presented to the emergency room for evaluation. She was diagnosed with sepsis and shock, as well as renal failure. Her condition deteriorated and she required intubation and respiratory support. K.B. was also diagnosed with pneumonia that grew out staph, pancreatitis, coronary emboli, bradycardia, Adult Respiratory Distress Syndrome, ischemic colitis, and a right hemispheric brain lesion that left her with left-sided paralysis.

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<sup>6</sup> Duoneb is a combination of two bronchodilators, albuterol sulfate and ipratropium bromide. It is used to treat symptoms (i.e., bronchospasms) in patients with lung disease (i.e., chronic obstructive pulmonary disease or COPD).

<sup>7</sup> Levaquin is a synthetic chemotherapeutic antibiotic of the fluoroquinolone drug class and is used to treat severe or life-threatening bacterial infections or bacterial infections that have failed to respond to other antibiotic classes.

**FIRST CAUSE FOR DISCIPLINE**  
(Gross Negligence – Patient K.B.)  
(Bus. & Prof. Code section 2234, subd. (b))

20. Complainant re-alleges the allegations contained in paragraphs 14 through 19 above, and incorporates them by reference as if fully set forth.

21. Respondent's license is subject to discipline under Code section 2234, subdivision (b), in that he was grossly negligent in his care and treatment of Patient K.B. as follows:

A. Respondent failed to diagnose and evaluate a patient in respiratory distress and failed to fully explore the etiology for K.B.'s hypoxia.

B. Respondent failed to initially treat and later refer K.B., who was in acute respiratory distress. Respondent should have begun oxygen therapy in his office and summoned advanced life support for immediate transport to the nearest emergency room.

**SECOND CAUSE FOR DISCIPLINE**  
(Repeated Negligent Acts - Patient K.B.)  
(Bus. & Prof. Code section 2234, subd. (c))

22. Complainant re-alleges the allegations contained in paragraphs 14 through 19 above, and incorporates them by reference as if fully set forth.

23. Respondent's license is subject to disciplinary action under Code section 2234, subdivision (c), in that he committed repeated negligent acts relative to his care and treatment of Patient K.B. as follows:

A. Respondent failed to document vital signs during K.B.'s visit on May 2, 2009.

B. Respondent failed to diagnose and evaluate a patient in respiratory distress and failed to fully explore the etiology for K.B.'s hypoxia.

C. Respondent failed to initially treat and refer K.B., who was in acute respiratory distress. Respondent should have begun oxygen therapy in his office and summoned advanced life support for immediate transport to the nearest emergency room

**PATIENT C.H.**

24. Patient C.H. was seen in Respondent's office three times in 2011. C.H. first presented at Respondent's office on April 15, 2011, to request pain medication refills and to possibly establish as a new patient. C.H. had a history of neck pain from bulging discs at C 5, 6,

1 and 7, and hypertension. C.H. was seen by LO, Respondent's Family Nurse Practitioner. C.H.  
2 told LO that he had seen a neurologist at the University of California at Davis and that he was a  
3 candidate for surgery. C.H. also explained to L.O. that he had been experiencing neck pain for  
4 two years and the pain was severe without pain medication. His medications at that time were as  
5 follows: (1) one tablet of Norco<sup>8</sup> 10/325 milligrams three times per day; (2) one tablet of  
6 Baclofen<sup>9</sup> 10 milligrams at bedtime; and (3) one tablet of Lisinopril<sup>10</sup> 10 milligrams per day.

7 25. During C.H.'s first visit, L.O. performed a brief exam and noted decreased range of  
8 motion of the neck. C.H.'s neurological exam was intact. L.O. re-filled C.H.'s medications for  
9 Norco, Baclofen, and Lisinopril for a one-month supply. C.H. was instructed to make a second  
10 appointment in order to establish as a new patient. L.O. was under Respondent's supervision,  
11 however Respondent failed to review C.H.'s visit chart for this visit.

12 26. C.H. was seen in Respondent's office again on May 12, 2011, for a new patient visit.  
13 Physician's Assistant C.R. saw C.H. during this visit. The notes from this visit indicate that C.H.  
14 had a history of hypertension since 2008, chronic neck pain for two to three years, two epidural  
15 shots two years ago, and right arm radiculopathy<sup>11</sup> at night. The notes also indicate that C.H.  
16 wanted to wait as long as possible before having surgery. Vital signs were reviewed and the  
17 general exam lists no acute distress, the respiratory exam lists normal, and the cardiovascular  
18 exam lists normal. Physician Assistant C.R. failed to perform and document a neck exam.

19 27. C.R. re-filled C.H.'s medications as follows: (1) one tablet Norco 10/325 milligrams  
20 every six to eight hours; (2) one tablet Baclofen 10 milligrams at night; and (3) one tablet  
21 Lisinopril 20 milligrams at night. C.R. wrote the prescription for four refills of each medication.

22 <sup>8</sup> Norco is a trade name for Vicodin.

23 <sup>9</sup> Baclofen is a derivative of gamma-amino butyric acid (GABA). It is primarily used to  
24 treat spasticity.

25 <sup>10</sup> Lisinopril is a drug of the angiotensin converting enzyme (ACE) inhibitor class that is  
26 primarily used in treatment of hypertension, congestive heart failure, heart attacks and also in  
preventing renal and retinal complications of diabetes.

27 <sup>11</sup> Radiculopathy is not a specific condition, but rather a description of a problem in which  
28 one or more nerves are affected and do not work properly (a neuropathy) resulting in pain  
(radicular pain), weakness, numbness, or difficulty controlling specific muscles.

1 C.R. documented in his chart note that C.H. took Baclofen twice per day, however C.H.'s  
2 prescription was only for one per day.

3 28. Respondent reviewed CR's chart notes for C.H.'s May 15, 2011 visit and signed the  
4 medical chart. Respondent felt it was permissible for C.R. to prescribe Norco with four refills if  
5 C.R. felt comfortable with C.H.

6 29. C.H.'s next visit to Respondent's office was on September 21, 2011. C.H. was seen  
7 by Physician's Assistant K.B. K.B.'s chart notes from this visit indicate C.H.'s vital signs and  
8 "normal" is circled under "general exam." K.B. failed to perform and document a physical  
9 examination of C.H. K.B. re-filled C.H.'s prescriptions for Norco, Baclofen, and Lisinopril. He  
10 ordered four re-fills of Norco, one refill of Lisinopril, and two refills of Baclofen. Respondent  
11 did not review C.H.'s medical chart for this visit.

12 30. On or about December 6, 2011, Respondent approved a fax refill for C.H. for Norco  
13 with no refills. Respondent told C.H. that he would need to come back into the office for a  
14 scheduled follow-up. C.H. returned to Respondent's office on or about December 6, 2011, to  
15 correct the apparent mistake in his Norco prescription. He was told by Respondent's employee  
16 that a new office policy as well as state law now required C.H. to come into the office every  
17 month for his pain medication prescription. Three days later, C.H. received a registered letter  
18 from Respondent's office stating that Respondent was no longer accepting C.H.'s insurance, even  
19 though C.H. paid cash for all of his visits.

20 **THIRD CAUSE FOR DISCIPLINE**

21 (Gross Negligence – Patient C.H.)  
(Bus. & Prof. Code section 2234, subd. (b))

22 31. Complainant re-alleges the allegations contained in paragraphs 24 through 30 above,  
23 and incorporates them by reference as if fully set forth.

24 32. Respondent's license is subject to discipline under Code section 2234, subdivision  
25 (b), in that he was grossly negligent in his care and treatment of Patient C.H. as follows:

26 A. Respondent allowed controlled substances to be prescribed to C.H. on two separate  
27 visits without any documentation of a physical exam. Controlled substances should not be  
28 prescribed without a physical exam.

1 B. Respondent allowed refill prescriptions for controlled substances to be written for up  
2 to four months without further office follow up. Prescriptions for controlled substances should  
3 only be written for one month at a time. Respondent also countersigned one of C.H.'s Norco  
4 prescriptions for multiple refills.

5 **FOURTH CAUSE FOR DISCIPLINE**  
6 (Repeated Negligent Acts – Patient C.H.)  
(Bus. & Prof. Code section 2234, subd. (c))

7 33. Complainant re-alleges the allegations contained in paragraphs 24 through 30 above,  
8 and incorporates them by reference as if fully set forth.

9 34. Respondent's license is subject to discipline under Code section 2234, subdivision  
10 (c), in that he committed repeated negligent acts relative to his care and treatment of Patient C.H.  
11 as follows:

12 A. Respondent failed to provide prior approval for the prescription of controlled  
13 substances to C.H. As the supervising physician for Nurse Practitioner LO, Physician's Assistant  
14 CR, and Physician's Assistant K.B., Respondent was required to provide prior approval for the  
15 prescription of controlled substances. Respondent only countersigned one of C.H.'s three  
16 prescriptions for controlled substances issued by his office.

17 B. Respondent's office failed to document C.H.'s pain by some form of pain scale for  
18 any of C.H.'s three visits to Respondent's office. Some form of pain scale should be used on all  
19 chronic pain patients to document their pain so that treatment progress can be evaluated.

20 C. Respondent allowed controlled substances to be prescribed to C.H. on two separate  
21 visits without any documentation of a physical exam. Controlled substances should not be  
22 prescribed without a physical exam.

23 D. Respondent allowed re-fill prescriptions for controlled substances to be written for up  
24 to four months without further office follow up. Prescriptions for controlled substances should  
25 only be written for one month at a time. Respondent also countersigned one of C.H.'s Norco  
26 prescriptions for multiple refills.

27 **PRAYER**

28 **WHEREFORE**, Complainant requests that a hearing be held on the matters alleged in this

1 Accusation, and that following the hearing, the Medical Board of California issue a decision:


2 1. Revoking or suspending Physician's and Surgeon's Certificate Number G76223,  
3 issued to Fa'afouina Salapiu Afato, M.D.;

4 2 Revoking, suspending or denying approval of Fa'afouina Salapiu Afato, M.D.'s  
5 authority to supervise physician assistants, pursuant to section 3527 of the Code;

6 3 Ordering Fa'afouina Salapiu Afato, M.D. to pay the Medical Board of California the  
7 costs of probation monitoring, if Respondent is placed on probation; and

8 4 Taking such other and further action as deemed necessary and proper.

9 DATED: July 24, 2013

  
KIMBERLY KIRCHMEYER  
Interim Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California

*Complainant*

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